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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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9 Marica Isela Encinas-Solano,
10 Plaintiff,

11 v.

12 United States Border Patrol, et al.,
13 Defendants.

No. CV-23-00227-TUC-SHR

ORDER

15 On May 15, 2023, Plaintiff Marica Isela Encinas-Solano filed a pro se civil rights
16 Complaint (Doc. 1) pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau*
of Narcotics, 403 U.S. 388 (1971),¹ and an Application to Proceed In District Court
17 Without Prepaying Fees or Costs (Doc. 7). For the following reasons, the Court will grant
18 the Application and dismiss the Complaint with leave to amend.

19 **I. Application to Proceed In District Court Without Prepaying Fees or Costs**

20 Plaintiff's Application to Proceed indicates she lacks sufficient funds to prepay the
21 filing fee for this action. The Application to Proceed will therefore be granted and Plaintiff
22 will not be required to pay the filing fees for this action.

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¹ Although Plaintiff did not identify a federal jurisdictional basis for this case, she
28 is seeking damages from federal officers who purportedly violated her constitutional rights.
Accordingly, the Court construes this action as having been filed pursuant to *Bivens v. Six
Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

1 **II. Statutory Screening of Prisoner Complaints**

2 Pursuant to 28 U.S.C. § 1915(e)(2), in a case in which a plaintiff has been granted
 3 in forma pauperis status, the Court shall dismiss the case “if the court determines that . . .
 4 the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be
 5 granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.”

6 A pleading must contain a “short and plain statement of the claim *showing* that the
 7 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
 8 not demand detailed factual allegations, “it demands more than an unadorned, the-
 9 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 10 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 11 conclusory statements, do not suffice.” *Id.*

12 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 13 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 14 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 15 that allows the court to draw the reasonable inference that the defendant is liable for the
 16 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
 17 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 18 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
 19 allegations may be consistent with a constitutional claim, a court must assess whether there
 20 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

21 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 22 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
 23 (9th Cir. 2010). A “complaint [filed by a *pro se* litigant] ‘must be held to less stringent
 24 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
 25 U.S. 89, 94 (2007) (per curiam)).

26 If the Court determines a pleading could be cured by the allegation of other facts, a
 27 *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
 28 case. *See Lopez v. Smith*, 203 F.3d 1122, 1127–29 (9th Cir. 2000) (en banc). Plaintiff’s

1 Complaint will be dismissed for failure to state a claim, but because it may possibly be
 2 amended to state a claim, the Court will dismiss it with leave to amend.

3 **III. Complaint**

4 In her one-count Complaint, Plaintiff appears to allege her Fifth Amendment due
 5 process and equal protection rights were violated when United States Border Patrol (USBP)
 6 Agents reneged on an agreement to forgo prosecution and discriminated against her based
 7 on her race. (Doc. 1 at 3.) Plaintiff is suing USBP Agent Arturo Acosta and an unspecified
 8 number of unnamed USBP Agents, named as “Federal Agents Border Patrol,” for damages.
 9 (*Id.* at 2.)

10 According to Plaintiff, in 2013 USBP Agent Manny Robles told Plaintiff she could
 11 obtain United States citizenship by disclosing information about a cartel in Mexico. (Doc.
 12 1 at 8.) After Plaintiff solicited such information from a friend and supplied it to USBP
 13 Agents, Acosta allegedly told her he would not give her “anything,” and would “send [her]
 14 to Mexico” if she stopped providing information. (*Id.* at 3.) By Plaintiff’s account, Acosta
 15 and other USBP Agents later revealed to another cooperating cartel member Plaintiff had
 16 served as an informant, and in 2017, she was kidnapped, tortured, and sexually abused as
 17 a result. (*Id.*) When Plaintiff told Acosta what had happened to her, he “laugh[ed] and
 18 said just don’t go to Mexico.” (*Id.*) Plaintiff also claims Acosta “pick[ed her] up of Illegal
 19 reentry” and tried to get her “convi[c]ted of something [she] didn’t do” after she had
 20 already supplied the information he requested. (*Id.*) Since then, Plaintiff has allegedly
 21 been harassed, intimidated, and discriminated against by USBP agents and was arrested for
 22 illegal reentry “as soon [as] one of them” saw her, even though they “know[she is] not
 23 illegal.” (*Id.*)

24 Plaintiff claims to have spent months in custody as a result of Defendants’ actions,
 25 during which time she broke her tailbone and was denied medical attention for a brain
 26 tumor. (Doc. 1 at 5.) She also allegedly suffered physical, mental, and emotional damage,
 27 including post-traumatic stress disorder, as a result of Defendants’ conduct. (*Id.*)
 28

1 **IV. Background**

2 Following her arrest in this District on November 23, 2013, Plaintiff pleaded guilty
 3 in *United States v. Encinas-Solano*, CR-14-00839-RB (D.N.M.), to a violation of 21 U.S.C.
 4 § 846: Conspiracy to Possess with Intent to Distribute Marijuana, contrary to 21 U.S.C.
 5 §§ 841(a)(1) and (b)(1)(D). The United States District Court for the District of New
 6 Mexico entered Judgment in that case on July 17, 2014, but the Court’s disposition is not
 7 apparent from the record. Following her apparent conviction in CR-14-00839-RB, Plaintiff
 8 was charged twice in this District with Illegal Reentry, in violation of 8 U.S.C. § 1326(a),
 9 (b)(2). Plaintiff was charged once in 2018, *see United States v. Encinas-Solano*, CR-18-
 10 00996-TUC-CKJ (LAB), and again in 2023, *see United States v. Encinas-Solano*, MJ-23-
 11 05813-TUC-MSA. Both charges were dismissed on the Government’s motion. *Encinas-*
 12 *Solano*, CR-18-00996-TUC-CKJ (LAB) (Doc. 53); *Encinas-Solano*, MJ-23-05813-TUC-
 13 MSA (Doc. 10).

14 **V. Availability of a *Bivens* Remedy**

15 Since the Supreme Court decided in *Bivens* a plaintiff could seek damages for a
 16 violation of the Fourth Amendment prohibition on illegal searches and seizures, 403 U.S.
 17 at 396–97, it has only recognized *Bivens* claims in two other cases—*Davis v. Passman*,
 18 442 U.S. 228 (1979), and *Carlson v. Green*, 446 U.S. 14 (1980). In *Davis*, the Court held
 19 a cause of action existed under *Bivens* for an administrative assistant’s claim alleging a
 20 Congressman had discriminated against her because of her gender, in violation of the Fifth
 21 Amendment’s Due Process Clause. *Davis*, 442 U.S. at 230–31. In *Green*, the Court
 22 recognized a *Bivens* remedy filed by a decedent’s family in a case involving an Eighth
 23 Amendment claim against federal prison officials for failing to treat decedent’s asthma.
 24 *Green*, 446 U.S. at 16–18. “These three cases . . . represent the only instances in which the
 25 [Supreme] Court has approved of an implied damages remedy under the Constitution
 26 itself.” *Ziglar v. Abbasi*, 582 U.S. 120, 131 (2017); *see also Egbert v. Boule*, 596 U.S. 482,
 27 483 (2022) (“Over the past 42 years, however, we have declined 11 times to imply a similar
 28 cause of action for other alleged constitutional violations.”).

1 Although the Supreme Court has not “dispense[d] with *Bivens* altogether,” it has
 2 “emphasized that recognizing a cause of action under *Bivens* is ‘a disfavored judicial
 3 activity.’” *Egbert*, 569 U.S. at 491 (quoting *Ziglar*, 582 U.S. at 135). In *Ziglar*, the
 4 Supreme Court set forth a two-part test to determine whether a *Bivens* claim may proceed:
 5 a court first must consider whether the claim at issue extends *Bivens* in a new context from
 6 previously established *Bivens* cases; if so, the court must then apply a “special factors
 7 analysis” to determine whether there are “special factors counselling hesitation” in
 8 expanding *Bivens*. *Ziglar*, 582 U.S. at 136. However, these two steps “often resolve to a
 9 single question: whether there is any reason to think that Congress might be better equipped
 10 to create a damages remedy.” *Egbert*, 569 U.S. at 492. A court “must ask only whether it,
 11 rather than the political branches, is better equipped to decide whether existing remedies
 12 ‘should be augmented by the creation of a new judicial remedy.’” *Id.* at 493 (quoting *Bush*
 13 *v. Lucas*, 462 U.S. 367, 388 (1983)). “The question is ‘who should decide’ whether to
 14 provide for a damages remedy, Congress or the courts? The answer most often will be
 15 Congress.” *Ziglar*, 137 S. Ct. at 1857 (2017) (quoting *Bush*, 462 U.S. at 388).

16 At this juncture, the Court need not determine whether Plaintiff can seek damages
 17 for her claims because, as discussed below, her allegations are insufficient to state a claim
 18 against any named Defendant. Accordingly, the Court will defer analysis of the availability
 19 of a *Bivens* remedy until after Plaintiff has alleged sufficient facts to claim her
 20 constitutional rights were violated.

21 **VI. Failure to State a Claim**

22 To prevail in a § 1983 or *Bivens* claim, a plaintiff must show (1) acts by the
 23 defendants (2) under color of state or federal law (as relevant) (3) deprived her of federal
 24 rights, privileges or immunities and (4) caused her damage. *Thornton v. City of St. Helens*,
 25 425 F.3d 1158, 1163–64 (9th Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish*
 26 & Game Comm’n, 42 F.3d 1278, 1284 (9th Cir. 1994)); *see also Van Strum v. Lawn*, 940
 27 F.2d 406, 409 (9th Cir. 1991) (“Actions under § 1983 and those under *Bivens* are identical
 28 save for the replacement of a state actor under § 1983 by a federal actor under *Bivens*.”).

1 In addition, a plaintiff must allege she suffered a specific injury as a result of the conduct
 2 of a particular defendant and must allege an affirmative link between the injury and the
 3 conduct of each defendant. *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

4 Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
 5 520–21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*
 6 *v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a liberal interpretation of a
 7 civil rights complaint may not supply essential elements of the claim. *Id.*

8 Failure to state a claim includes circumstances where a defense is “complete and
 9 obvious from the face of the pleadings.” *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th
 10 Cir. 1984), abrogated on other grounds by *Neitzke v. Williams*, 490 U.S. 319 (1989). In
 11 the absence of waiver, the Court may raise the defense of statute of limitations sua sponte.
 12 See *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 687 (9th Cir. 1993); see also *Hughes*
 13 *v. Lott*, 350 F.3d 1157, 1163 (11th Cir. 2003) (upholding sua sponte dismissal under 28
 14 U.S.C. § 1915(e)(2)(B)(i) of prisoner’s time-barred complaint). The applicable statute of
 15 limitations in an action under *Bivens* is the forum state’s statute of limitations for personal
 16 injury actions. *Valadez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011) (““Although
 17 federal law determines when a *Bivens* claim accrues, the law of the forum state determines
 18 the statute of limitations for such a claim.”” (quoting *Papa v. United States*, 281 F.3d 1004,
 19 1009 (9th Cir. 2002))). Arizona’s statute of limitations for personal injury actions is two
 20 years. See Ariz. Rev. Stat. § 12-542(1). Thus, to be timely, Plaintiff’s claims must have
 21 accrued no more than two years before her Complaint was filed. In other words, they must
 22 have accrued on or before May 15, 2021.

23 **A. Defendants Federal Agents Border Patrol**

24 Plaintiff’s claim against the Defendants identified as “Federal Agents Border
 25 Patrol” is premised on a vague allegation, i.e., an unspecified number of USBP agents
 26 intimidated her, discriminated against her, and arrested her on sight “knowing [she is] not
 27 illegal.” Such an allegation is not sufficient to support liability under *Bivens*. See *Marcilis*
 28 *v. Twp. of Redford*, 693 F.3d 589, 596 (6th Cir. 2012) (upholding dismissal of *Bivens*

1 complaint because it referred to all defendants “generally and categorically” and the
 2 plaintiff had failed to “allege, with particularity, facts that demonstrate what *each*
 3 defendant did to violate the asserted constitutional right.”” (quoting *Lanman v. Hinson*, 529
 4 F.3d 673, 684 (6th Cir. 2008)); *cf. Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir.
 5 2008) (“Given the [§ 1983] complaint’s use of either the collective term ‘Defendants’ or a
 6 list of the defendants named individually but with no distinction as to what acts are
 7 attributable to whom, it is impossible for any of these individuals to ascertain what
 8 particular unconstitutional acts they [allegedly] committed.”). Plaintiff has not attempted
 9 to differentiate among the actions of the unquantified group of individuals she names as
 10 Defendants, nor has she alleged specific facts showing what role each individual member
 11 of this group played in the violation of her due process and/or equal protection rights.
 12 Plaintiff has therefore failed to state a claim against the Defendants identified as “Federal
 13 Agents Border Patrol,” and these Defendants will be dismissed without prejudice.

14 **B. Defendant Acosta**

15 **1. Breach of Cooperation Agreement**

16 Plaintiff appears to claim Defendant Acosta violated her due process rights when a
 17 cooperation agreement he induced her to enter in 2013 was subsequently violated.
 18 However, she has not alleged sufficient facts to state a claim on this basis. While Plaintiff
 19 claims Acosta “pick[ed her] up of Illegal reentry” on an unspecified date and told her at
 20 some point he would give her “nothing,” it is not clear how, exactly, Acosta was involved
 21 in Plaintiff’s arrest and prosecution or how he was aware of her identity and her status as
 22 an informant at the time he “pick[ed her] up.” Absent additional information concerning
 23 the nature of Plaintiff’s cooperation agreement and *specific facts* showing how Acosta was
 24 involved in an arrest and prosecution in violation of the agreement, Plaintiff cannot state a
 25 claim against Acosta on this basis.

26 In addition, it appears any claim against Acosta on the basis of a breached
 27 cooperation agreement is barred by the relevant statute of limitations. Plaintiff has failed
 28 to allege Acosta was involved in any way in her most recent (2023) arrest and prosecution,

1 and her allegations indicate other USBP agents were responsible for her arrest in
 2 connection with MJ-23-05813-TUC-MSA. Thus, any claim against Acosta for falsely
 3 inducing Plaintiff into entering into a cooperation agreement or attempting to convict her
 4 for “something [she] didn’t do” would have accrued on or before October 17, 2019, the
 5 date on which the Court dismissed the indictment in CR-18-0996-TUC-CKJ (LAB). As a
 6 result, absent a basis for tolling,² which does not appear in the Complaint, such claims are
 7 barred by the relevant statute of limitations.

8 **2. Failure to Protect**

9 To the extent Plaintiff intended to assert a due process claim against Defendant
 10 Acosta based on her allegation he exposed her to violence at the hands of cartel members,
 11 her allegations are similarly deficient. “[N]othing in the language of the Due Process
 12 Clause itself requires the State to protect the life, liberty, and property of its citizens against
 13 invasion by private actors.” *Deshaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S.
 14 189, 195 (1989). Therefore, “a State’s failure to protect an individual against private
 15 violence simply does not constitute a violation of the Due Process Clause.” *Id.* at 197.
 16 There are two exceptions to this rule: the custody exception and the state-created-danger
 17 exception. *Peete v. Metro. Gov’t of Nashville & Davidson Cnty.*, 486 F.3d 217, 223 (6th
 18 Cir. 2007). The custody exception applies when a state “takes a person into its custody

20 ² Arizona law provides for the tolling of the statute of limitation after a cause of
 21 action accrues for the period during which a plaintiff was less than 18 years old or of
 22 unsound mind. Ariz. Rev. Stat. § 12-502. If a person is, at the time the cause of action
 23 accrued, either under 18 years of age or of unsound mind, “the period of such disability
 24 shall not be deemed a portion of the period limited for commencement of the action” and
 25 “[s]uch person shall have the same time after removal of the disability which is allowed to
 26 others.” *Id.* However, it is insufficient to summarily claim an inability to bring an action
 27 as a result of mental disability. *Doe v. Roe*, 955 P.2d 951, 964 (Ariz. 1998). Rather, a
 28 plaintiff must set forth specific facts showing he or she was unable to manage his or her
 affairs or understand his or her legal rights or liabilities. *Id.*

29 Arizona courts also recognize equitable exceptions to the application of a statute of
 30 limitations “when necessary to prevent injustice.” *Nolde v. Frankie*, 964 P.2d 477, 480
 31 (Ariz. 1998). Under Arizona’s equitable tolling doctrine, a plaintiff may sue after the
 32 statutory period to file a complaint has expired if he was “prevented from filing in a timely
 33 manner due to sufficiently inequitable circumstances.” *McCloud v. State*, 170 P.3d 691,
 34 696 (Ariz. Ct. App. 2007) (quoting *Seitzinger v. Reading Hosp. & Med. Ctr.*, 165 F.3d 236
 35 (3d Cir. 1999)). However, the tolling of a statute of limitations for equitable reasons
 36 requires a finding of extraordinary circumstances. *Id.*

1 and holds him there against his will.” *Deshaney*, 489 U.S. at 199–200, and “does not apply
 2 when a state fails to protect a person who is not in custody,” *Patel v. Kent School Dist.*,
 3 648 F.3d 965, 972 (9th Cir. 2011). The state-created-danger exception only applies when
 4 “there is ‘affirmative conduct on the part of the state in placing the plaintiff in danger.’”
 5 *Id.* at 974 (quoting *Munger v. City of Glasgow Police Dep’t*, 227 F.3d 1082, 1086 (9th Cir.
 6 2000)). In other words, where state action “creates or exposes an individual to a danger
 7 which he or she would not have otherwise faced.” *Henry A. v. Willden*, 678 F.3d 991,
 8 1002–03 (9th Cir. 2012) (quoting *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th
 9 Cir. 2006)). This exception is limited to situations in which the state acted with “‘deliberate
 10 indifference’ to a ‘known and obvious danger.’” *Id.* at 998 (quoting *Patel*, 648 F.3d at
 11 972).

12 By claiming Defendant Acosta revealed Plaintiff’s status as an informant to a cartel
 13 member, Plaintiff has adequately alleged Acosta undertook affirmative action and placed
 14 her in danger. Although she claims her identity was disclosed to another informant by
 15 “Arturo Acosta, Manny Robles and other agents working with him,” absent more
 16 information concerning the specific circumstances of Acosta’s disclosure, this allegation
 17 is not sufficient to show Acosta disclosed Plaintiff’s status with “‘deliberate indifference’
 18 to a ‘known and obvious danger.’” *Id.* at 1002–03 (quoting *Kennedy*, 439 F.3d at 1061).
 19 Plaintiff has therefore failed to state a claim against Acosta for failing to protect her.

20 Moreover, Plaintiff’s allegations indicate she was assaulted by cartel members in
 21 2017 and was aware, at the time of her kidnapping and assault, the violence had been
 22 prompted by Defendant Acosta’s disclosure. Thus, as alleged, Plaintiff’s failure-to-protect
 23 claim appears to be barred by the relevant statute of limitations.

24 **VII. Leave to Amend**

25 For the foregoing reasons, Plaintiff’s Complaint will be dismissed for failure to state
 26 a claim upon which relief may be granted. Plaintiff may submit a first amended complaint
 27 to cure the deficiencies outlined above no later than **Monday, March 11, 2024**. The Clerk
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1 of Court will mail Plaintiff a court-approved form to use for filing a first amended
 2 complaint.³

3 Plaintiff must clearly designate on the face of the document it is the “First Amended
 4 Complaint.” The first amended complaint must be retyped or rewritten in its entirety on
 5 the court-approved form and may not incorporate any part of the original Complaint by
 6 reference. Plaintiff may include only one claim per count.

7 A first amended complaint supersedes the original Complaint. *Ferdik v. Bonzelet*,
 8 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
 9 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat the original Complaint
 10 as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action raised in the original
 11 Complaint and voluntarily dismissed or dismissed without prejudice is waived if it is not
 12 alleged in a first amended complaint. *Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th
 13 Cir. 2012) (en banc).

14 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
 15 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name
 16 of the Defendant who violated the right; (3) exactly what each Defendant did or failed to
 17 do; (4) how the action or inaction of each Defendant is connected to the violation of
 18 Plaintiff’s constitutional right; and (5) what specific injury Plaintiff suffered because of
 19 each Defendant’s conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

20 Plaintiff must repeat this process for each person she names as a Defendant. If
 21 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
 22 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
 23 failure to state a claim. **Conclusory allegations that a Defendant or group of
 24 Defendants has violated a constitutional right are not acceptable and will be
 25 dismissed.**

26 To state a claim for a violation of the Equal Protection Clause, a plaintiff must
 27

28 ³ Although Plaintiff is not a prisoner, she is encouraged to use this form to assist her
 in coherently presenting her claims to the Court.

1 typically show “the defendants acted with an intent or purpose to discriminate against the
 2 plaintiff based upon membership in a protected class.” *Barren v. Harrington*, 152 F.3d
 3 1193, 1194 (9th Cir. 1998). The United States Supreme Court has also recognized
 4 “successful equal protection claims brought by a ‘class of one,’ where the plaintiff alleges
 5 that [he or she] has been intentionally treated differently from others similarly situated and
 6 that there is no rational basis for the difference in treatment.” *Village of Willowbrook v.*
 7 *Olech*, 528 U.S. 562, 564 (2000); *see also SeaRiver Maritime Fin. Holdings, Inc. v. Mineta*,
 8 309 F.3d 662, 679 (9th Cir. 2002). If Plaintiff chooses to submit an amended complaint,
 9 she should take note of these legal principles before attempting to draft one.

10 **VIII. Warnings**

11 **A. Address Changes**

12 Plaintiff must file and serve a notice of a change of address in accordance with Rule
 13 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
 14 relief with a notice of change of address. Failure to comply may result in dismissal of this
 15 action.

16 **B. Possible Dismissal**

17 If Plaintiff fails to timely comply with every provision of this Order, including these
 18 warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963 F.2d
 19 at 1260–61 (noting a district court may dismiss an action for failure to comply with any
 20 order of the Court).

21 **IT IS ORDERED:**

22 (1) Plaintiff’s Application to Proceed In District Court Without Prepaying Fees
 23 or Costs (Doc. 7) is **GRANTED**.

24 (2) The Complaint (Doc. 1) is **DISMISSED** for failure to state a claim. Plaintiff
 25 has up to and including **Monday, March 11, 2024**, to file a first amended complaint in
 26 compliance with this Order.

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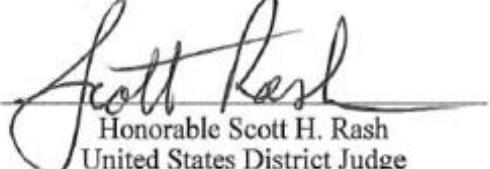
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1 (3) If Plaintiff fails to file an amended complaint by the end of the day **Monday,**
2 **March 11, 2024**, the Clerk of Court must, without further notice, enter a judgment of
3 dismissal of this action without prejudice and deny any pending unrelated motions as moot.

4 (4) The Clerk of Court must mail Plaintiff a court-approved form for filing a
5 civil rights complaint by a prisoner.

6 Dated this 9th day of February, 2024.

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Honorable Scott H. Rash
United States District Judge

**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. **Who May Use This Form.** The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. **The Form.** **Local Rule of Civil Procedure (LRCiv) 3.4 provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. **Your Signature.** You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. **The Filing and Administrative Fees.** The total fees for this action are \$402.00 (\$350.00 filing fee plus \$52.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed in forma pauperis. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. **Original and Judge's Copy.** You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
6. **Where to File.** You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$402 filing and administrative fees or the application to proceed in forma pauperis to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. **Change of Address.** You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. **Certificate of Service.** You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed in forma pauperis). Each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. *See Fed. R. Civ. P. 5(a), (d).* Any document received by the Court that does not include a certificate of service may be stricken. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____
Address: _____

Attorney for Defendant(s)

(Signature)

9. **Amended Complaint.** If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. **Exhibits.** You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. **Letters and Motions.** It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “*Bivens v. Six Unknown Federal Narcotics Agents*” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. **Counts.** You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. **Issue Involved.** Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked "Other," you must identify the specific issue involved.
3. **Supporting Facts.** After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. **Injury.** State precisely how you were injured by the alleged violation of your rights.
5. **Administrative Remedies.** You must exhaust any available administrative remedies before you file a civil rights complaint. *See 42 U.S.C. § 1997e.* Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number _____

Place of Confinement _____

Mailing Address _____

City, State, Zip Code _____

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____,
(Full Name of Plaintiff)

Plaintiff,

v.

(1) _____,
(Full Name of Defendant)

(2) _____,

(3) _____,

(4) _____,

Defendant(s).

Check if there are additional Defendants and attach page 1-A listing them.

CASE NO. _____

(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- Original Complaint
- First Amended Complaint
- Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

- 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
- 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).
- Other: _____.

2. Institution/city where violation occurred: _____.

B. DEFENDANTS

1. Name of first Defendant: _____ . The first Defendant is employed as: _____ at _____ .
(Position and Title) (Institution)
2. Name of second Defendant: _____ . The second Defendant is employed as:
as: _____ at _____ .
(Position and Title) (Institution)
3. Name of third Defendant: _____ . The third Defendant is employed
as: _____ at _____ .
(Position and Title) (Institution)
4. Name of fourth Defendant: _____ . The fourth Defendant is employed
as: _____ at _____ .
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____ .
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____ .
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____ .

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

COUNT I

1. State the constitutional or other federal civil right that was violated: _____

2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

- 3. Supporting Facts.** State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

- 4. Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## **5. Administrative Remedies:**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Count I? Yes No

c. Did you appeal your request for relief on Count I to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT II

1. State the constitutional or other federal civil right that was violated: _____

2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

- 3. Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## **5. Administrative Remedies.**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Count II? Yes No

c. Did you appeal your request for relief on Count II to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT III

1. State the constitutional or other federal civil right that was violated: _____

_____.

2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

- 4. Injury.** State how you were injured by the actions or inactions of the Defendant(s).

5. **Administrative Remedies.**

 - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No
 - b. Did you submit a request for administrative relief on Count III? Yes No
 - c. Did you appeal your request for relief on Count III to the highest level? Yes No
 - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.